



U.S. Department of Justice

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September 17, 2004

Hon. Morris Stern, U.S.B.J.  
United States Bankruptcy Court  
District of New Jersey  
50 Walnut Street  
Newark, NJ 07102

Subject: Jazz Photo  
Case No. 03 -26565 (MS)

Hearing Date: Wed. Sept. 22, 2004

Dear Judge Stern:

Please accept this letter in lieu of a more formal pleading in opposition to Fuji's pending motions for estimation of administrative claim, stay relief or a determination that the stay does not apply and conversion of the case to chapter 7.

As to the administrative claim, the United States Trustee submits that the relief requested by Fuji is not permitted by the Bankruptcy Code. Administrative claims must be "allowed" not "estimated." See King, *Collier on Bankruptcy*, Volume 4, ¶503.02 (Fifteenth Ed. Rev'd 2002); compare 11 U.S.C. §§502 and 503. Estimation proceedings even where permitted are only appropriate when necessary to avoid undue delay. Here the estimation of Fuji's administrative claim at this time will not remove any obstacle to the filing of a plan or distribution to creditors. In this case the ability to file a plan and ultimately make a distribution to creditors is dependent upon the resolution of the Imation litigation and appeal of the District Court's decision which is the basis of Fuji's unsecured claim. In the event that Fuji does establish an administrative claim, Fuji would be entitled to payment on par with other administrative claimants, such as professionals. This may at some point require a "catch up" for Fuji, but at this juncture Fuji's claim has not been proven and the Code does not provide for its allowance based upon an estimation without any competent evidence.

Related to the administrative claim is Fuji's request for a determination that it is not stayed from proceeding for injunctive relief and damages against the debtor for post-petition infringement of its patents. The United States Trustee submits that this estate is best served by allowing the ITC matters to reach a conclusion prior to the institution of parallel proceedings in District Court. To the extent that Fuji has asserted an administrative claim against the debtor, this court is capable of determining the quantum of that claim after the ITC proceedings are complete. In the meantime, the ITC has issued a cease and desist order, essentially an injunction, which is being

By: /s/  
Margaret Lambe Jurow  
Trial Attorney